

**Testimony of**  
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**HEALTH CARE FINANCING ADMINISTRATION**  
**on**  
**IMPROVING OVERSIGHT AND QUALITY OF NURSING HOME CARE**  
**before the**  
**SENATE SPECIAL COMMITTEE ON AGING**  
**June 30, 1999**

Chairman Grassley, Senator Breaux, distinguished committee members, thank you for inviting me to discuss our efforts to improve oversight and quality of care for America's 1.6 million nursing home residents. I would also like to thank the General Accounting Office (GAO) for its continued involvement and evaluation.

Last July, President Clinton announced a major initiative to increase protections for vulnerable nursing home residents and crack down on problem providers. Since then, we have worked diligently with your Committee, the GAO, States, providers, advocates, residents and their families to implement and build upon the initiative's many essential provisions.

This hearing comes at an opportune time as we are, in effect, moving into a second phase of the initiative. We have spent the last 12 months primarily designing and implementing the initiative by establishing new policies, clarifying rules and getting guidance out to States on how they should proceed. We are now increasing efforts to monitor how States are acting on specific provisions and determine where we need to take further action to ensure effective implementation. Some lessons are already becoming clear

- Many States have not begun investigating consumer complaints within 10 days.
- Some States have been unable to begin conducting surveys on evenings and weekends, often because of existing labor agreements.
- More needs to be done to ensure that the initiative is implemented evenly across the country.

We are taking steps to make sure providers and State survey agencies in all parts of the country receive uniform instructions on how to proceed. And some State legislatures are addressing resource and other issues that may be barriers to success.

We greatly appreciate the interest and assistance of this Committee in our initiative. We know you appreciate the challenge of implementing its 30 distinct, often complicated, and interrelated provisions. The task requires dozens of agencies and thousands of individuals across the country to literally and substantially change the way they conduct the business of protecting vulnerable nursing home residents. There is much left to do, but we are committed to taking all these and any additional actions that will help build upon our efforts. By continuing to work with you, the GAO, States, advocates and providers, we will together put an end to the intolerable situations that have caused this most vulnerable population to needlessly suffer.

## **BACKGROUND**

Protecting nursing home residents is a priority for this Administration and our agency. We are committed to working with States, which have the primary responsibility for conducting inspections and protecting resident safety. Some 1.6 million elderly and disabled Americans receive care in

approximately 16,800 nursing homes across the United States. Through the Medicare and Medicaid programs, the federal government provides funding to the States to conduct on-site inspections of nursing homes participating in Medicare and Medicaid and to recommend sanctions against those homes that violate health and safety rules.

In July 1995 the Clinton Administration implemented the toughest nursing home regulations ever, and they brought about marked improvements. However, both we and the GAO found that many nursing homes were not meeting the requirements, and that many States were not sufficiently monitoring and penalizing facilities that failed to provide adequate care and protection.

Therefore, in July 1998, President Clinton announced a broad and aggressive initiative to improve State inspections and enforcement, and crack down on problem providers. We have provided monthly reports to the Special Committee on Aging and the GAO on our progress with this initiative. To strengthen enforcement, we have:

- expanded the definition of facilities subject to immediate enforcement action without an opportunity to correct problems before sanctions are imposed. The guidance to States made clear that such "grace periods" should only be for violations that do not cause actual harm to residents at facilities that do not have a history of recurring problems;
- identified facilities with the worst compliance records in each State, and each State has chosen two of these "special focus facilities" for frequent inspection and intense monitoring, and monthly status reports. Through closer scrutiny and immediate sanctions, we are working to prevent "yo-yo" compliance, in which problems are fixed only temporarily and are cited again in subsequent surveys;
- provided comprehensive training and guidance to States on enforcement, use of quality indicators in surveys, medication review during surveys, and prevention of pressures sores, dehydration, weight loss, and abuse;
- instructed States to stagger surveys and conduct a set amount on weekends, early mornings and evenings, when quality and safety and staffing problems often occur, and so facilities can no longer predict inspections;
- instructed States to look at an entire chain's performance when serious problems are identified in any facility that is part of a chain, begun developing further guidelines for sanctioning facilities within problem chains, and begun collecting State contingency plan data in case of chain financial problems;
- required State surveyors to revisit facilities to confirm in person that violations have been corrected before lifting sanctions; and
- instructed State surveyors to investigate consumer complaints within 10 days;
- developed new regulations to enable States to impose civil money penalties for each serious incident and supplement current rules that link penalties only to the number of days that a facility was out of compliance with regulations;
- begun working with the Department of Justice to improve referral of egregious cases where residents have been harmed for potential prosecution; and
- met with the Department's Departmental Appeals Board to discuss increased work load due to the nursing home initiative.

To follow through on the new requirements that have been placed on State survey agencies, we have established a new monitoring system for evaluating State survey teams' adherence to Federally mandated procedures and policies using a standardized assessment tool.

We also are now beginning to use quality indicators in conjunction with the Minimum Data Set that facilities maintain for each resident. These quality indicators furnish continuous data about the quality of

care in each facility. That will allow State surveyors to focus on possible problems during inspections, and it will help nursing homes identify areas that need improvement.

We are beginning to get information from this new monitoring system, and will soon be getting data based on the quality indicators. We will use this new information to work with States to strengthen any weaknesses in their enforcement activities. However, we also have made clear that States will lose federal funding if they fail to adequately perform surveys and protect residents. We can and we will contract with other entities, if necessary, to make sure those functions are performed properly.

### **Consumer Focus**

Our initiative also includes efforts to increase nursing home accountability by making information on each facility's care and safety record available to residents, their families, care givers, and advocates. We have:

- created a new Internet site, Nursing Home Compare, at [www.medicare.gov](http://www.medicare.gov), which allows consumers to compare survey results and safety records when choosing a nursing home, and which has so far received approximately 1,387,191 page views since Nursing Home Compare went live September 30, 1998;
- posted best practice guidelines at [www.hcfa.gov/medicaid/siq/siqhmpg.htm](http://www.hcfa.gov/medicaid/siq/siqhmpg.htm) on how to care for residents at risk of weight loss and dehydration;
- begun pilot testing a wide range of initiatives to detect and prevent bed sores, dehydration, and malnutrition in ten states. We worked with outside experts to develop a systematic, data driven process to identify problems and provide focus for in-depth on-site assessments. We are taking interim steps this year, and expect to complete the new system by the end of 2000;
- worked with the American Dietetic Association, clinicians, consumers and nursing homes to share best practices for preventing these problems. And we will begin a national campaign to educate consumers and nursing home staff about the risks of malnutrition and dehydration and nursing home residents' rights to quality care this year; and
- begun a study on nursing home staffing that will consider the costs and benefits of establishing minimum staffing levels, and is expected to be completed by early next year.

We expect in the near future to:

- implement a new survey protocol we developed with a national abuse and neglect forum for evaluating nursing homes' abuse and neglect prevention processes;
- publish new survey procedures on clearer guidance on key quality of life/quality of care issues including nutrition, hydration, and pressure sores effective early July 1999; and
- publish new survey procedures for evaluating the use of effective drugs.

In addition, we will continue to develop and expand our consumer information to increase awareness regarding nursing home issues. We are now conducting a national consumer education campaign on preventing and detecting abuse. It features a visually compelling poster for public display, and is currently being pilot tested in 10 States. We also are planning national campaigns to educate residents, families, nursing homes and the public at large about the risks of malnutrition and dehydration, nursing home residents' rights to quality care, and the prevention of resident abuse and neglect.

### **Complaint Investigations**

A key addition to our initiative includes provisions designed to address problems with State survey

agency response to complaints. These provisions include:

- requiring all State survey agencies to investigate any complaint alleging harm to a resident within 10 working days;
- reiterating to States that complaints alleging immediate jeopardy to residents must be investigated within two days;
- stressing to States that they must enter complaint information into our data system promptly;
- developing additional standards, including maximum time frames, for the prompt investigation of serious complaints alleging non-immediate jeopardy harm to residents and for complaints deferred until the next survey;
- strengthening federal oversight of complaint investigations by incorporating complaint responsiveness and complaint data as performance measures; and
- requiring that substantiated results of complaint investigations be included in Federal data systems or accessible by Federal officials.

As mentioned above, many States are having difficulty meeting the new requirement to investigate consumer complaints alleging actual harm to residents within 10 days. The primary reason cited is a lack of resources to carry out the work. This is troubling, as your Committee and the GAO have documented serious lapses in State investigation of complaints regarding truly intolerable situations. We are working with the States to assess whether additional resources are needed and to make sure they understand the requirements and are receiving consistent guidance.

Some States are allocating additional resources of their own to meet the 10 day requirement. Maryland, for example, plans to almost double the number of surveyors. Florida also has enacted legislation to increase nursing home oversight staff and funding. And some States were already meeting or exceeding the requirement. Others, however, indicate that their State legislatures are not likely to provide additional funding.

We have provided States with an additional \$8 million for fiscal 1999 to help comply with this and other nursing home initiative provisions. The President has requested an additional \$60.1 million in his fiscal 2000 budget for nursing home enforcement efforts, which will help States comply with the mandate. However, it is clear that States must also recognize the importance of these efforts in their own allocation of resources.

### **Staggered Surveys**

Another important provision in the initiative requires States to conduct standard surveys during "off" hours. This is already widely implemented, and surveyors report that their appearance at 5:00 a.m. or on Saturday has indeed caught staff off guard. One State agency projects that the total number of problems found in these off-hours inspections will be about 10 percent higher than in previous inspections.

However, as with consumer complaints, not all States are successfully implementing the new requirement to stagger surveys and conduct some on nights and weekends in order to end the predictability that had minimized survey effectiveness. In some States there are labor issues where existing contracts preclude evening and weekend work assignments.

We intend to monitor this situation closely, and to work with States to help them comply. But, again, we must reiterate that States will lose federal funding if they fail to adequately perform surveys and protect residents. We can and we will contract with other entities, if necessary, to make sure all functions are performed properly.

## **Improving Consistency**

To ensure more consistent success across the country, we are strengthening communication with our Regional Offices and make sure that providers and State survey agencies in all parts of the country receive uniform instructions on how to proceed. We are conducting cross-regional surveys to identify and address inconsistencies in survey findings among Regions. And we have three workgroups of staff from our Central and Regional Offices collaborating to address specific problems areas.

One workgroup has found that inconsistencies in the survey process are largely due to a need for more training on both the State and Federal level. It also proposed systems for tracking enforcement results and reports that could be used to provide feedback on the State Agency's Survey Performance. It developed several recommendations to address inconsistencies in the enforcement process. And it is working to evaluate and provide guidance on efforts to minimize trauma to residents when they must relocate due to facility closures.

A second workgroup is collecting data to evaluate the budgetary and resource impact of initiative provisions such as staggered surveys, special focus facilities, and use of new quality of care information and enhanced survey protocols. They also have recommended system changes that are needed to monitor and evaluate initiative activities.

And a third workgroup has developed strategies to develop better coordination with the State survey agencies and Administration on Aging ombudsmen. For example, they have recommended more interaction, through regular conference calls and face to face meetings, to discuss current and future goals. They have also recommended convening a Leadership Conference with key partners to develop more effective ways of combining our resources to achieve success.

## **CONCLUSION**

We are continuing to push for full implementation of our nursing home initiative. Solid progress is being made, and nursing homes clearly have received the message that we are serious about protecting vulnerable nursing home residents. We are committed to ensuring that the initiative is fully implemented, and to evaluating its impact and making any necessary adjustments or additions. We look forward to continuing to work with you, the GAO, providers, advocates, nursing home residents and families as we proceed. And, I am happy to answer your questions.